

REMARKS/ARGUMENTS

Reconsideration of this application, in view of the foregoing amendment and the following remarks and arguments, is respectfully requested.

Claims 1, 4, 12, 23 and 24 are currently pending in this application. By the foregoing amendment Claims 1 and 24 have been revised. Accordingly, Claims 1, 4, 12, 23 and 24 remain in this application for consideration and allowance.

Claims 1, 4, 12 23 and 24 currently stand rejected under 35 USC §103(a) as being unpatentable over U.S. Patent 6,248,110 to Reiley et al. This rejection is respectfully traversed for the following reasons.

Via amended independent Claim 1, each of applicants' Claims 1, 4, 12, 23 and 24 now specifies that applicants' claimed method step of providing a tool is performed using a tool comprising a hollow body including a circumferential wall having a distal end, and an extension that protrudes from the circumferential wall beyond the distal end and forms a platform that is **open in a radial direction and has a side surface facing in the radial direction**. Further, applicants' claimed cavity forming step is performed by expanding a recited expandable structure **against the radially facing platform side surface** in a manner causing the expandable structure to expand **radially away from the side surface** in a manner compressing cancellous bone on one side of the side surface, while leaving cancellous bone on the opposite side of the side surface substantially uncompressed.

U.S. Patent 6,248,110 to Reiley et al simply does not disclose or in any manner suggest applicants' claimed method. In an attempt to meet the limitations of applicants' claims the Examiner analogizes a distal end portion of the Reiley et al catheter tube 50 (namely, the longitudinal portion disposed inwardly of the distal catheter tube end 54 with the suction holes 88 therein as shown in FIG. 4) to applicants' claimed platform.

However, as can be clearly seen in Reiley et al FIGS. 4 and 5K(2), the expandable balloon member 56 does not and cannot expand against **any** radially facing side surface portion of the distal end of the catheter tube 50 in a manner directing further expansion of the balloon radially outwardly from such side surface portion during performance of the disclosed Reiley et

al method - the balloon 56 is secured to and extends axially away from the distal end 54 of the tube 50 and, as may readily be discerned from FIGS. 4 and 5K(2), expands from the end 54 of the tube 50 as opposed to a radially facing side surface portion of a distal end portion of the tube 50.

Moreover, as can readily be seen by comparing FIGS. 5J(1) and 5L in Reiley et al, the cavity 84 formed in the cancellous bone 32 using the disclosed Reiley et al method winds up as being substantially compressed in both upward and downward directions relative to the horizontal axis of the tube 50 subsequent to the inflation of the balloon 56. The only reason that the downward cancellous bone compression depth is substantially less than the upward cancellous bone compression height is the fact that the tube 50 was initially quite close to a bottom portion (as viewed in FIGS. 5J(1) and 5L) of the cortical bone 28.

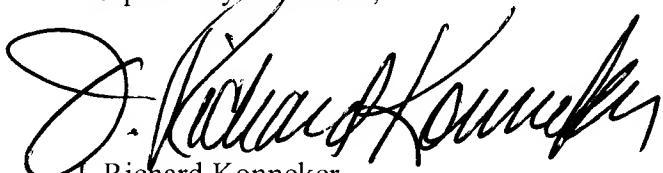
Since the Reiley et al reference fails to disclose or suggest at least the above-discussed limitations in applicants' Claims 1, 4, 12 23 and 24, it is respectfully submitted that such claims are patentably distinguishable over Reiley et al.

At least dependent Claim 24 is seen to be even further distinguishable over the Reiley et al reference via such claim's recitation that the extension (which forms the recited platform) protrudes from the distal end of the hollow body from only a relatively small circumferential portion of the circumferential wall of the hollow body. Even assuming, *arguendo*, that the perforated end portion of the Reiley et al tube 50 is analogous to applicants' claimed extension or platform as the Examiner contends, such perforated end portion clearly extends from the entire circumferential wall of the tube 50 - not "only a relatively small circumferential portion" as required by applicants' Claim 24.

In view of the foregoing remarks and arguments, all of the claims currently pending in this application are seen to be in a condition for allowance. A Notice of Allowance of Claims 1, 4, 12, 23 and 24 is therefore earnestly solicited.

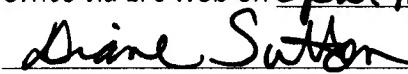
The Examiner is hereby requested to telephone the undersigned attorney of record at 972/739-8612 if such would further or expedite the prosecution of the instant application.

Respectfully submitted,


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| I hereby certify that this correspondence is being filed with the U.S. Patent and Trademark Office via EFS-Web on <u>April 16, 2009</u> . | |
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